

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPELLATE SIDE****WRIT PETITION NO.3987 OF 2005**

 Office Notes, Office
 Memoranda of Coram,
 appearances, Court's
 orders or directions
 and Registrar's orders.

Court's or Judge's orders

Mr. J.M. Shah with J.S. Shah for the
 Petitioners.

CORAM : S.A.BOBDE, J.

DATED : 17TH JUNE, 2005

P.C.

. The petitioners have challenged the refusal of the trial Court to take their written statement on record. This order has been confirmed by the Bench of the Court of Small Causes, Mumbai in Appeal No..267 of 2005. The petitioners who are defendants in the suit for eviction were served with the summons in the suit on or about 15th April, 2003. One of them was apparently served on the 17th of October, 2003. According to the petitioners their written statement was prepared in December, 2003, but since they were residing in Surat for most of the time they could not file written statement. The learned Counsel for the Respondents submits that as a matter of fact none of the defendants are residing in the suit

premises. However, I do not propose to decide that contention in this petition. The written statement was eventually tendered in January, 2004. In view of the amendment to the Code of Civil Procedure the trial Court rejected the prayer to take the written statement on record. The trial Court has observed that the Defendant No.1 who was said to be unwell during the period and subsequently expired cannot be taken to have been so unwell throughout that he had to be confined to bed the whole of that period. Having regard to the circumstances of the case the trial Court found that there was no sufficient cause for not filing the written statement within 30 days and even within the extended period of 60 days thereafter. The Appellate Court has concurred with the finding of the trial Court. Sufficient cause is not pointed out even before this Court to show why the petitioners did not file their written statement within the prescribed period. There is no infirmity jurisdictional or otherwise in the order of the trial Court. The petition is devoid of any merits. Petition dismissed.

(S.A. BOBDE, J.)